

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

CI 20,758

In re: 2480 16th Street, N.W.

Ward One (1)

DORCHESTER HOUSE TENANTS ASSOCIATION
Tenant/Appellant

v.

DORCHESTER HOUSE ASSOCIATES LTD. P'SHIP
Housing Provider/Appellee

ORDER ON HOUSING PROVIDER MOTION TO DISMISS

May 30, 2003

BANKS, CHAIRPERSON. On May 20, 2003, the Commission held its hearing on the appeal filed on September 11, 2002, by the Dorchester House Tenants Association (Tenants). At the hearing, as a preliminary matter, counsel for the Dorchester House Associates Limited Partnership (Housing Provider) made a motion to dismiss the Tenants' appeal based on the alleged lack of standing by the Tenants to appeal due to the failure of the counsel for the Tenants, Bernard Gray, to appear on March 29, 2002, at the hearing before the Office of Adjudication (OAD). There was legal argument on the motion to dismiss by both counsel, for the Tenants Association and the Housing Provider, at the Commission's hearing. The Commission deferred ruling on the motion until after the conclusion of the Commission's

hearing to review the OAD recording of the hearing and testimony before OAD.

The OAD CD contains the proceedings of the OAD hearing on March 29, 2002, including the appearances of counsel for the Housing Provider and a witness for the Housing Provider. Three Tenants appeared without their counsel, Bernard Gray, who was absent. One Tenant, Ann E. Cooke, testified that she was an officer in the Tenant Association. At the hearing Ms. Cooke raised two legal issues. The first related to the Housing Provider beginning the capital improvements before the OAD hearing commenced and before the issuance of the OAD decision and order; and second, she asked why the capital improvement petition was being adjudicated, when Hearing Examiner Gerald Roper ruled that no tenant petitions could be decided until after the appeal in TP 3788 was final.

On August 22, 2002, the hearing examiner issued the OAD decision, which states:

Present at the hearing were: John K. Hoskinson, agent for Housing Provider; Stephen A. Abraham, Esquire, counsel for Housing Provider; Anne E. Cooke, Tenant of Unit #442; Gamal Ibrahim, Tenant of Unit #226 and Mervyn L. Washington, Jr., Tenant of #Unit [sic] 312. However, Respondent Dorchester House Tenants Association and their counsel, Bernard Grey Esquire, failed to appear at the scheduled Hearing [sic].

Parties

The Housing Provider/Petitioner is Dorchester House Associates Limited Partnership. The individual Tenants who signed the sign-in sheet, as listed above, appeared individually.

With respect to Dorchester House Tenants Association (the "Tenants Association"), 14 DCMR §§ 3904.2 and 3904.3 provide that if a tenants association seeks to be a party, the ALJ shall determine the identity and number of tenants who are represented by the association, and that if a majority of the tenants are represented by the association, the association shall be listed in the caption as a party. Pursuant to an Order dated December 19, 2001, Hearing Examiner Jerald [sic] Roper directed Bernard Grey, [sic] Esquire the attorney for Dorchester House Tenants Association to file, not less than five days prior to the hearing, a list of its members and a statement signed by each member evidencing his or her membership. On May 15, 2001, the attorney for the Dorchester House Tenants Association filed his list and membership statement signed by one Hundred and ninety-eight (198) tenants. As a consequence, the ALJ has determined that the Dorchester House Tenant Association represents a majority of the tenants, and therefore, the name of the Dorchester House Tenants Association shall be listed in the above caption as a party.

OAD decision at 2.

The Housing Provider did not file an appeal with the Commission from the above quoted rulings of the hearing examiner.

I. THE LAW

The Rental Housing Act of 1985 provides that appeals may be made to the Commission from the decisions of the

Rent Administrator within ten (10) days of the Rent Administrator's decision. D.C. OFFICIAL CODE § 42-3502.16(h) (2001). The Commission's rule, 14 DCMR § 3802.1 (1991), provides: "[a]ny party aggrieved by a final decision of the Rent Administrator may obtain review of that decision by filing a notice of appeal with the Commission."

The Commission is required by law to dismiss appeals that are untimely filed, because time limits are mandatory and jurisdictional. United States v. Robinson, 361 U.S. 209 (1960); Hija Lee Yu v. District of Columbia Rental Hous. Comm'n, 505 A.2d 1310 (D.C. 1986); Totz v. District of Columbia Rental Hous. Comm'n, 474 A.2d 827 (D.C. 1974). The Commission determines the time period between the issuance of the OAD decision and the filing of the notice of appeal by counting only business days, as required by its rules. See 14 DCMR § 3802.2 (1991); Town Center v. District of Columbia Rental Hous. Comm'n, 496 A.2d 264 (D.C. 1985).

An issue must be first raised below at the Rent Administrator's hearing. 1880 Columbia Road v. District of Columbia Rental Hous. Comm'n, 400 A.2d 333, 339 (D.C. 1979).

Only the persons who appeared as parties below have standing to appeal. DeLevay v. District of Columbia Rental Accommodations Comm'n, 411 A.2d 354, 360 (D.C. 1980).

Only those Tenants who were parties below and parties to the appeal can be affected by the outcome, Lenkin Co. Mgmt., Inc. v. District of Columbia Rental Hous. Comm'n, 642 A.2d 1282, 1287-88 (D.C. 1994).

The Commission's rule, 14 DCMR § 3802.5(b) (1991), provides that an issue related to an error in the decision and order must be raised in a notice of appeal with specific information, especially "a clear and concise statement of the alleged error(s) in the decision of the Rent Administrator." See also, Sindram v. Borger Mgmt., TP 27,392 (RHC June 25, 2002) (where the Commission dismissed an appeal because it was not from a final order and did not comply with the appeal rules for filing a proper notice of appeal).

"If a tenant association seeks to be a party, the hearing examiner shall determine the identity and number of tenants who are represented by the association, 14 DCMR § 3904.2 (1991). "If a majority of the tenants are

represented by the association, the association shall be listed in the caption," 14 DCMR § 3904.3 (1991).

An association may be represented by a member of the association, 14 DCMR § § 3812 & 4004 (1991).

II. THE COMMISSION'S ORDER

At the Commission's hearing, the Housing Provider moved for the dismissal of the Tenants' appeal by raising the issues of whether the Tenants' Association appeared as a party in the OAD proceedings below, whether the Tenants Association represents the majority of the Tenants as required by § 3904.3, and whether the Tenants Association can raise issues on appeal. These issues are not properly before the Commission, because the Housing Provider did not file a notice of appeal to raise them in accordance with the Commission's rules, 14 DCMR § § 3802.1, 3802.5(b) (1991). The Housing Provider, as required by the Act, D.C. OFFICIAL CODE § 42-3502.16(h) (2001), and the Commission's rules, did not file a notice of appeal to properly raise these issues before the Commission, as alleged errors in the OAD decision and order. Therefore, the Commission denies the Housing Provider's motion to dismiss.


However, the Commission may sua sponte raise jurisdictional issues. See Brandywine v. District of

Columbia Rental Hous. Comm'n, 631 A.2d 415 (D.C. 1993).

The jurisdictional issue is whether the Commission has a proper appealing party before it on appeal. The review of the OAD CD showed, although the Tenants Association counsel, Mr. Gray, failed to appear, Ms. Anne E. Cooke, appeared and stated that she was an officer of the Tenants' Association. She was sworn as a witness and she raised two legal issues about the OAD hearing proceedings, as described above. Therefore, since the Tenants' Association appeared at the OAD hearing through Ms. Cooke, it has standing to appeal to the Commission, DeLevay; Lenkin Co. Mgmt.; 14 DCMR § § 3812 & 4004 (1991) (which provide that a member of the association may represent the association).

Accordingly, the Housing Provider's motion to dismiss the appeal is denied.

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the **ORDER ON MOTION TO DISMISS APPEAL** in CI 20,758 was served by priority mail with confirmation of delivery on **30th day of May 2003** on:

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